

Supreme Court, U.S.  
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No. 82-1724

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In The  
**Supreme Court of the United States**

OCTOBER TERM, 1983

STATE OF NEW YORK,

*Petitioner,*

vs.

ROBERT UPLINGER and SUSAN BUTLER,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE  
NEW YORK STATE COURT OF APPEALS

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PETITIONER'S OBJECTION TO MOTION OF  
AMERICAN CIVIL LIBERTIES UNION AND  
THE NEW YORK CIVIL LIBERTIES UNION  
TO FILE BRIEF *AMICI CURIAE*

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Petitioner State of New York hereby respectfully files its objection, pursuant to Supreme Court Rule 36.3, to the motion made by the American Civil Liberties Union and the New York Civil Liberties Union for leave to file a brief *amici curiae*. The motion and brief *amici curiae* were received by petitioner on December 20, 1983. Consent to file a brief as *amici curiae* had been requested of petitioner but refused on the ground that *amici* had no concrete, substantial interest in the decision of the case.

Petitioner respectfully requests that the Court deny the motion for leave to file the brief *amici curiae* because the proffered brief of the American Civil Liberties Union and the New York Civil Liberties Union will not assist the Court in that it will not present any relevant arguments or materials which

would not otherwise be submitted. The arguments advanced by *amici* for the striking of New York Penal Law §240.35(3) include vagueness, First Amendment violations, and unconstitutional application to the facts of the case.

A comparison of the instant *amici curiae* brief with the briefs filed by respondents Uplinger and Butler demonstrates that these issues have been very well briefed, including abundant examples and authorities, by the parties in the case. *Amici* American Civil Liberties Union and New York Civil Liberties Union have no stake in the decision of the case when compared to the parties. Accordingly, since the issues, authorities, and arguments discussed by *amici* are wholly duplicative of those already before this Court in the briefs of respondents, no justification exists to grant the instant motion.

For all the foregoing reasons, petitioner respectfully requests this Court to deny the motion of the American Civil Liberties Union and the New York Civil Liberties Union for leave to file a brief *amici curiae*.

Respectfully submitted,

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